

TJAGSA Practice Notes

Faculty, The Judge Advocate General's School

Ethics Note

The General Officer Aide and the Potential for Misuse

Introduction

"Rank has its privileges." That adage has some truth, at least when it comes to the benefits conferred upon general officers in the U.S. military. Along with respect and responsibility, promotion provides perks that are not available to lower ranking officers. When an Army officer pins on the first star, that officer also takes on additional privileges. As privileges increase, so does the potential for abuse of those privileges, and more importantly, so does the level of public scrutiny. To assist general officers, judge advocates must understand the issues. The purpose of this note is to educate attorneys on the selection and roles of general officer aides, identify potential areas for

abuse, and assist attorneys in protecting their general officers from allegations of unethical conduct.

The Selection of Personal Aides

The Army authorizes general officers to have the assistance of a personal staff, to include an officer aide de camp¹ and enlisted soldiers.² Although 10 U.S.C. § 3543 permits more than one officer aide contingent upon the general officer's grade,³ the Army has traditionally limited general officers to one officer aide de camp.⁴ The actual number of enlisted aides authorized is determined by the U.S. Total Army Personnel Command (PERSCOM) using a complex statutory formula.⁵ Regulations explicitly establish the entitlement to aides for a few general officers,⁶ but "budget constraints" and the general officer's specific requirements determine the entitlement for

1. U.S. DEP'T OF ARMY, FIELD MANUAL 101-5, STAFF ORGANIZATION AND OPERATIONS 4-29 (31 May 1997) [hereinafter FM 101-5] (establishing the aide de camp as a member of the general officer's personal staff).

2. U.S. DEP'T OF ARMY, ARMY REG. 614-200, ENLISTED ASSIGNMENTS AND UTILIZATION MANAGEMENT para. 8-10 (31 Oct. 1997) [hereinafter AR 614-200].

3. See 10 U.S.C. § 3543 (2000).

§ 3543. Aides: detail; number authorized.

(a) Each major general of the Army is entitled to three aides selected by him from commissioned officers of the Army in any grade below major.

(b) Each brigadier general of the Army is entitled to two aides selected by him from commissioned officers of the Army in any grade below captain.

Id.

4. See U.S. DEP'T OF ARMY, ARMY REG. 614-16, PERSONAL STAFF FOR GENERAL OFFICERS para. 1-2 (7 June 1974) [hereinafter AR 614-16, 1974 version]. *Army Regulation (AR) 614-16* was superceded on 15 December 1981 by the then current version of *AR 614-200*. General officers "occupying a modification table of organization and equipment (MTOE) position" and general officers "in command of troops may be assigned an aide de camp." U.S. DEP'T OF ARMY, ARMY REG. 614-16, PERSONAL STAFF FOR GENERAL OFFICERS para. 1-1 (C1, 7 Nov. 1975).

5. The congressionally established formula is found in 10 U.S.C. § 981, as follows:

§ 981. Limitation on number of enlisted aides.

(a) Subject to subsection (b), the total number of enlisted members that may be assigned or otherwise detailed to duty as enlisted aides on the personal staffs of officers of the Army, Navy, Marine Corps, Air Force, and Coast Guard (when operating as a service of the Navy) during a fiscal year is the number equal to the sum of (1) four times the number of officers serving on active duty at the end of the preceding fiscal year in the grade of general or admiral, and (2) two times the number of officers serving on active duty at the end of the preceding fiscal year in the grade of lieutenant general or vice admiral.

(b) Not more than 300 enlisted members may be assigned to duty at any time as enlisted aides for officers of the Army, Navy, Air Force, and Marine Corps.

10 U.S.C. § 981.

6. See, e.g., AR 614-200, *supra* note 2, para. 8-10a (establishing the Army Chief of Staff's entitlement to four enlisted aides); see also AR 614-16, 1974 version, *supra* note 4, para. 2-3. "General of the Army is authorized three enlisted aides, and generals and lieutenant generals in public quarters are authorized three and two aides respectively. General officers in selected O8 and O7 positions (when incumbent is in public quarters) will be authorized aides by separate HQDA (ODCSPER) letter." *Id.* Table 2-1 of the 1974 version of *AR 614-16* indicates that major generals and brigadier generals who are specifically authorized an enlisted aide by HQDA (ODCSPER) may each have one enlisted aide in the grade of E-7 and E-6, respectively. *Id.* tbl. 2-1.

most general officers.⁷ These soldiers normally work directly for the general officer.⁸

In most cases, the general officer personally selects the soldiers who will serve as aides. General officers may select an aide "from within their command or request aide nominations from the Officer Personnel Management Directorate (OPMD), PERSCOM."⁹ Whoever chooses the junior officer, selection as an aide de camp commonly distinguishes young officers from their peers.

The coveted aide de camp and enlisted aide positions bring laurels to those selected to serve a general officer. "There are few more subjective honors in the Army than being chosen as aide de camp, the personal assistants who cater to scores of the service's top generals."¹⁰ The reason is clear. "The post is a strong indicator of success: one-third of the Army's top generals were aides early in their careers."¹¹

The selection of enlisted aides is equally subjective. Enlisted soldiers may volunteer for enlisted aide duty, provided they meet certain eligibility requirements.¹² The "Sergeant Majors Branch, Enlisted Personnel Management Branch (EPMB), PERSCOM, nominates qualified soldiers for such

positions," and the General Officer Management Office "manages the authorizations,"¹³ but the individual general officer often chooses his own aides.

The Role of Personal Aides

There is little official published guidance on the role of general officer aides. Aides may look to *Army Regulation (AR) 614-200* for guidance; however, *AR 614-200* pertains only to enlisted soldiers and does not contain any provisions that regulate aides de camp. *Army Regulation 614-16* regulated both officer and enlisted aides until 1975, when it was superceded by *AR 614-200*, which omits the provisions governing aides de camp.¹⁴ Consequently, no current Army regulation covers aides de camp.¹⁵ Nonetheless, a section in the General Officer Policies pamphlet provides guidance.¹⁶ This guidance instructs aides de camp to "remain flexible" and that their "actual duties depend upon the personality of the general" for whom they work.¹⁷

While aides de camp fulfill a more public role, enlisted aides are normally less visible. The sole mission of enlisted aides is to assist the general in the performance of military and official

7. AR 614-200, *supra* note 2, para. 8-10a.

8. *Field Manual 101-5* establishes the aide de camp as a member of the general officer's personal staff. FM 101-5, *supra* note 1, at 4-29. It is not uncommon, however, for enlisted aides to work directly under the supervision of the aide de camp. General Officer Policies, General Officer Management Office (GOMO), October 1995, at 10 (unpublished, on file with GOMO and with author) [hereinafter GOMO Handbook].

9. GOMO Handbook, *supra* note 8, at 10.

10. Dana Priest, *A Male Prototype for Generals' Protégés; In Choosing Aides de Camp, Army's Leaders Nearly Always Exclude Female Officers*, WASH. POST, Dec. 29, 1997, at A1.

11. *Id.*

12. The prerequisites include the possession of a current food-handler's certificate, at least twelve months of remaining active service, a minimum general technical score of ninety, a valid driving permit, and a Single-Scope Background Information (SSBI) or no information on record that may preclude a favorable SSBI. AR 614-200, *supra* note 2, para. 8-10d.

13. GOMO Handbook, *supra* note 8, at 10.

14. See *supra* note 4.

15. *Army Regulation 611-101, COMMISSIONED OFFICER CLASSIFICATION SYSTEM* (26 June 1995), contains a brief description of the aide de camp role, but does not outline required or permissible duties. Similarly, *AR 614-200, supra* note 2, contains brief coverage of enlisted aides' duties. In the mid-70s, the Quartermaster's School at Fort Lee, Virginia, produced an informational booklet entitled *The Enlisted Aide*. Efforts to obtain a copy have proven fruitless.

16. A section entitled "Aide de Camp Handbook" is included in the GOMO Handbook, *supra* note 8. This section is the only "official" written guidance available for aides de camp.

17. *Id.* at 33. The pamphlet states the aide de camp's duties succinctly: "Your primary mission is simply to assist the general in the performance of his or her duties, a simple definition, but a monumental task." *Id.* More practical guidance is outlined under the heading "What is an Aide?"

An aide has to be a secretary, companion, diplomat, bartender, caterer, author, and map reader as well as mind reader. He or she must be able to produce at a minutes notice timetables, itineraries, the speeds and seating capacity of various aircraft, trains, and sundry surface transportation . . . , must know the right type of wine for a meal, how many miles it is to Timbuktu, where to get the right information and occasionally, how the bosses steak or roast beef ought to be cooked . . . always look fresh, always know what uniform to wear, what is happening a week from today, have the latest weather report and in their spare time study to maintain military proficiency.

Id.

duties. They are "authorized for the purpose of relieving general and flag officers of those minor tasks and details which, if performed by the officers, would be at the expense of the officers' primary military and official duties."¹⁸

There are several limitations on enlisted aides' duties, however. First, officers are prohibited by statute from using "an enlisted member of the Army as a servant."¹⁹ This generally precludes requiring an enlisted aide to perform duties that personally benefit the officer, as opposed to duties that professionally benefit the officer. Second, the duties of enlisted aides must "relate to the military and official duties of the [general officer] and thereby serve a necessary military purpose."²⁰ The language of Department of Defense Directive (DODD) 1315.9 more specifically prohibits the use of enlisted soldiers for "duties which contribute only to the officer's personal benefit and which have no reasonable connection with the officer's

official responsibilities."²¹ Finally, the Standards of Ethical Conduct for the Executive Branch,²² or the *Joint Ethics Regulation (JER)*,²³ further limit interaction between officers and their subordinates. Under the *JER*, subordinates' official time may only be used for official duties.²⁴

The types of authorized duties that a superior may assign to an enlisted aide are diverse. *Army Regulation 614-200* outlines a "not all inclusive" list of "official functions" or duties, including cleaning the officer's quarters, uniforms, and personal equipment; shopping and cooking; and running errands.²⁵ Many of the enumerated duties seem personal in nature. But, "[t]he propriety of the duties is determined by the official purpose they serve, rather than the nature of the duties."²⁶ In *United States v. Robinson*,²⁷ the Court of Military Appeals asserted that a different interpretation "which would apply the proscription to the kind of work done, and not to its ultimate

18. DEP'T OF DEFENSE, DIR. 1315.9, UTILIZATION OF ENLISTED PERSONNEL ON PERSONAL STAFFS OF GENERAL AND FLAG OFFICERS para. III.A (26 Feb. 1975) [hereinafter DOD Dir. 1315.9].

19. 10 U.S.C. § 3639 (2000). This provision was originally part of the Army Appropriations Act of 15 July 1870, and was codified at § 14, 16 U.S. Stat. 319: "Sec. 14. And be it further enacted, That it shall be unlawful for any officer to use any enlisted man as a servant in any case whatever." *Id.* The language was changed somewhat in 10 U.S.C. § 608 (1956): "§ 608. Officers using enlisted men as servants. No officer shall use an enlisted man as a servant in any case whatsoever." *Id.* In *United States v. Robinson*, 20 C.M.R. 63 (C.M.A. 1955), the Court of Military Appeals determined that the

real purpose of the enactment was to prevent the use of enlisted men in assignments that contributed only to the convenience and personal benefit of individual officers which had no reasonable connection with the efficient employment of the armed services as a fighting force.

The word "servant" has a myriad of meanings, but as used in the context of the original act, we conclude that Congress intended to give it the meaning of one who labors or exerts himself for the personal benefit of an officer. Certainly, it could not have intended to prevent an enlisted man from laboring for officers in furtherance of their official duties. As enacted originally, the Act suggests that Congress was interested in having the enlisted men of the Army earn their pay in the performance of military duties, and not as personal servants attending to the physical comforts of their individual superior officers.

Id. at 68.

20. AR 614-200, *supra* note 2, para. 8-10b.

21. DOD Dir. 1315.9, *supra* note 18, para. III.B. But see AR 614-200, *supra* note 2 (stating that the "no reasonable connection" language of DODD 1315.9 was not included in the proscriptions of AR 614-200).

22. STANDARDS FOR ETHICAL CONDUCT FOR THE EXECUTIVE BRANCH, 5 C.F.R. § 2635 (1993) [hereinafter STANDARDS FOR ETHICAL CONDUCT].

23. DEP'T OF DEFENSE, DIR. 5500.7-R, JOINT ETHICS REGULATION (30 Aug. 1993).

24. STANDARDS FOR ETHICAL CONDUCT, *supra* note 22, § 2635.705b. This provision states that "[a]n employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation." *Id.*

25. The list is included in both AR 614-200, *supra* note 2, and DODD 1315.9, *supra* note 18. The following provisions are found at AR 614-200, paragraph 8-10b:

In connection with military and official functions and duties, enlisted aides may perform the following (list not all inclusive, provided only as a guide):

- (1) Assist with care, cleanliness, and order of assigned quarters, uniforms, and military personal equipment.
- (2) Perform as point of contact (POC) in the GO's quarters. Receive and maintain records of telephone calls, make appointments, and receive guests and visitors.
- (3) Help plan, prepare, arrange, and conduct official social functions and activities, such as receptions, parties and dinners.
- (4) Help to purchase, prepare and serve food and beverages in the GO's quarters.
- (5) Perform tasks that aid the officer in accomplishing military and official responsibilities, to include performing errands for the officer, providing security for the quarters, and providing administrative assistance.

AR 614-200, *supra* note 2, para. 8-10b.

26. 10 U.S.C. § 3639 (2000). Paragraph 8-10b of AR 614-200 repeats this language verbatim. Cf. AR 614-200, *supra* note 2, para. 8-10b.

purpose, would so circumscribe the military community that the preparation for, or the waging of, war would be impossible.”²⁸ The duties assigned to an enlisted aide only need to have a “reasonable connection” to the military duties of the general officer.²⁹

The general officer himself often determines what duties his aides are to perform and whether the duties are reasonably connected to the general’s official duties. Aides perform many of these assigned duties inside the officer’s quarters. Consequently, little or no monitoring of the enlisted aides’ activities occurs. Whether the duties actually are official is seldom questioned or known. Enlisted aides would unlikely protest if the rules were bent. After all, working for the general is a privilege and the position is highly sought. Consequently, a Specialist, or even a Master Sergeant, is unlikely to tell a general officer, “No, sir. I think that assignment crosses the ethical line.” Even if the aide knows that the task is personal, rather than official, the aide may perform the assignment loyally without ever considering a complaint.

The Potential for Misuse

Aides often develop very close relationships with their general officers.³⁰ The benefits of these long-term relationships did not go unnoticed by the military, which authorizes enlisted

aides to transfer with the general’s “household.”³¹ Consequently, enlisted aides often develop close relationships with the officer’s family, as well. In such a relationship, it is not difficult to envision situations in which a general officer assigns “unofficial” duties to or asks “favors” from an aide. The general officer must remain mindful that he only assigns duties reasonably connected to the officer’s military duties.³² Moreover, the general officer must take care to avoid requesting favors. Favors conjure the concept of personal, rather than official, requests. While requested favors may include chores reasonably related to the officer’s military duties, it may be more appropriate for the general to direct or order the performance of such official duties.

Favors may also require legal and ethical analysis. While an aide may voluntarily perform a favor, the nature of the aide’s willingness may be an issue. Whether a Specialist could freely decline to perform a requested favor is questionable.³³ Additionally, if in performance of the favor the aide “labors or exerts himself for the personal benefit of an officer,”³⁴ then the officer may be in violation of the prohibition against using a subordinate as a servant.³⁵

Moreover, favors may be improper for other reasons. Aides may only perform official duties during official time. To the degree that it is improper to use official time for personal purposes,³⁶ it may be unethical for an aide to perform favors during

27. *United States v. Robinson*, 20 C.M.R. 63 (C.M.A. 1955).

28. *Id.* at 68.

29. DOD DIR. 1315.9, *supra* note 18, para. III.B (requiring a nexus between the duties and the officer’s official responsibilities).

30. “This relationship is one of slaps on the back, of genuine warmth.” Priest, *supra* note 10, at A1 (quoting a general officer explaining his relationship with his enlisted driver).

31. Paragraph 8-10e of AR 614-200 outlines the following guidance:

Enlisted aides serving on the GO’s staff may be reassigned with the GO provided—

- (1) The GO so desires.
- (2) The enlisted aide is authorized in the new assignment.
- (3) PERSCOM’s clearance is obtained.

AR 614-200, *supra* note 2, para. 8-10e.

32. *Id.* para. 8-10b.

33. Only enlisted soldiers who volunteer for duty as a general officer aide are assigned as such. See *id.* para. 8-10d. Volunteering to serve as an aide, however, does not necessarily imply that the aide volunteers to perform any particular duty.

34. *United States v. Robinson*, 20 C.M.R. 63, 68 (C.M.A. 1955).

35. 10 U.S.C. § 3639 (2000).

36. The prohibition against using official time for personal purposes is not absolute.

(a) Use of an employee’s own time. Unless authorized in accordance with law or regulations to use such time for other purposes, an employee will use official time in an honest effort to perform official duties. An employee . . . has an obligation to expend an honest effort and *reasonable proportion* of his time in the performance of official duties.

STANDARDS FOR ETHICAL CONDUCT, *supra* note 22, § 2635.705a (emphasis added).

duty hours.³⁷ Furthermore, it follows that a supervisor may also violate ethical rules by allowing a subordinate to use official time for unofficial duties.³⁸ Cognizant of the proscription against using official time for unofficial duties, an aide may volunteer to perform personal duties after duty hours.³⁹

An aide's "off-duty" performance of a "favor," however, could also be subjected to the Standards for Ethical Conduct's gift analysis. As a general rule, subordinate employees may not give gifts to superiors, and superiors may not directly or indirectly accept gifts from subordinates.⁴⁰ Although the Standards for Ethical Conduct provide several exceptions to the general rule,⁴¹ these exceptions do not apply to the "gift" of services. As most people realize, time is money; people do not normally undertake responsibilities without some sort of compensation. Therefore, the time an aide spends conducting the general officer's unofficial or personal chores could be viewed as compensable. To the extent that the aide receives no remuneration, the favor may be a gift. That an aide conducts the service secretly should not affect the analysis.⁴² Consequently, both

aides and general officers must be vigilant to ensure that aides' duties are official, rather than personal, in nature.

Another potential "gift" situation bears mention. General officers should also periodically ensure that their subordinates have not improperly subsidized either the general's personal or official expenses. Aides de camp often handle the general officer's petty cash fund.⁴³ The general officer routinely provides advance money⁴⁴ for the purchase of small items, like stamps or uniform accessories, or other small expenses, like lunches. Aides de camp are instructed to keep accurate records of such expenses, both for the general officer's income taxes and to avoid commingling funds. It is not unthinkable that an aide may "absorb" expenses for which a receipt was lost. Such a practice is comparable to the giving of a "gift" by the subordinate officer, however, and is prohibited by the Standards for Ethical Conduct.⁴⁵

The aide's close relationship with and proximity to the officer's family may create other ethical problems. While

37. The regulation does not define "reasonable proportion." Therefore, while it may be permissible for aides to perform unofficial favors during duty hours, it does not follow that such activities are expedient.

38. See STANDARDS FOR ETHICAL CONDUCT, *supra* note 22, § 2635.705b.

(b) Use of a subordinate's time. An employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

Id. This proscription is more definite than the guidance found in section 2635.705a, which includes a "reasonable proportion" proviso.

39. Based upon the disparity between the ranks of the parties, an unbiased observer may question the "voluntary" nature of any service provided by an enlisted soldier for a general officer.

40. See STANDARDS FOR ETHICAL CONDUCT, *supra* note 22, § 2635.302. The Standards for Ethical Conduct generally prohibit subordinates from giving gifts to superiors. Moreover, the regulation makes it unlawful for a superior to solicit a gift from a subordinate.

41. The rule has both general and special exceptions:

(a) General exceptions. On an occasional basis, including any occasion on which gifts are traditionally given or exchanged, the following may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

- (1) Items, other than cash, with an aggregate market value of \$10 or less per occasion;
- (2) Items such as food and refreshments to be shared in the office among several employees;
- (3) Personal hospitality provided at a residence which is of a type and value customarily provided by the employee to personal friends;
- (4) Items given in connection with the receipt of personal hospitality if of a type and value customarily given on such occasions; and
- (5) Leave transferred

(b) Special, infrequent occasions. A gift appropriate to the occasion may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

- (1) In recognition of infrequently occurring occasions of personal significance such as marriage, illness, or birth or adoption of a child; or
- (2) Upon occasions that terminate a subordinate-official superior relationship, such as retirement, resignation, or transfer.

Id. § 2635.304(a)-(b).

42. An aide may undertake inappropriate duties on his or her own volition without the general officer's direction, knowledge or approval. This, however, does not diminish the inappropriate nature of the conduct.

43. GOMO HANDBOOK, *supra* note 8, at 44.

44. In addition to other authorized pay and allowances, 37 U.S.C. § 414 grants a "personal money allowance to general officers." 37 U.S.C. § 414 (2000).

45. See generally STANDARDS FOR ETHICAL CONDUCT, *supra* note 22, § 2635.302.

transporting the general's unaccompanied spouse or children on personal errands is clearly inappropriate for the general's aide or driver, other problem areas are less obvious. For instance, it is not uncommon for an aide, who routinely performs official household chores for the general, to perform "unofficial" duties or "favors" for the general officer's spouse. One particularly troublesome situation arises when an enlisted aide performs services for the Officers' Spouses Club when that private organization meets in the general officer's quarters. Less obvious, but equally improper, is the use of enlisted aides to assist an officer's spouse with Family Readiness Groups. Despite the fact that Army regulations authorize logistical support to Family Readiness Groups,⁴⁶ use of the general officer's aides to assist the general's spouse with organizational chores is inappropriate. The aides' statutory duties are to assist with the general officer's military and official duties, rather than that officer's spouse's "official" obligations.

Questions about the use of the general's aides are seldom raised. When concerns are voiced, they usually regard an aide's activities outside the general officer's residence. For example, the Inspector General's office may receive a telephone complaint that soldiers routinely mow the general's lawn or work in the general's vegetable garden, that someone saw the general's driver driving the general's son home from football practice, or that a visitor to the general's office saw the general's daughter's college application in the aide's typewriter. These clearly are tasks that, if performed by the officer, would be at the expense of the officer's military or official duties. But, these tasks are also highly personal in nature, and do not inherently serve a necessary military purpose. These examples illustrate the problems caused when officers assign aides tasks without a military nexus.

Discerning whether an aide's assigned duties are reasonably connected to a general officer's military duties often meets with great difficulty. Having an aide "run" an official errand is obviously related to the officer's duties. Having that aide hand-carry a general officer's household goods shipment claim is also reasonably related to military duty. The determination becomes much more questionable when the aide's duties relate to what would otherwise be considered personal matters. Cooking, cleaning, and personal errands may fall into this cat-

egory. Ostensibly, if there is a nexus between grocery shopping for a general officer and that officer's military duty, one could argue that a similar nexus exists between the same chore and a brigade commander's duties, or a battalion commander's, or a company commander's. If an enlisted soldier's completion of an officer's personal time-consuming tasks permits the officer more time to concentrate on his official duties, isn't the required nexus established? Is it permissible then for general officers to lawfully and ethically order soldiers to complete tasks that would be unlawful or unethical if performed for a more junior officer? The answer may simply be that rank has its privileges. Both AR 614-200⁴⁷ and DODD 1315.9⁴⁸ authorize enlisted aides to perform duties for general officers that would otherwise be prohibited if performed for lower ranking officers. There is, however, an overarching principle that cannot be violated: generals' aides are to perform official, rather than personal, duties.⁴⁹

The line that separates "official" duties from duties that inure solely to the personal benefit of the officer, however, is often very fine. For instance, an enlisted aide's preparation of a meal for visiting dignitaries to consume in the general's quarters is an official duty. On the other hand, it would be inappropriate for the general officer to order that same soldier to prepare a candlelight dinner for the general officer and the officer's spouse. Between the two extremes lie more questionable duties, such as the preparation of a meal at which the general officer and a subordinate will discuss "business."

What does "official" really mean? Can a duty be both official and personal?⁵⁰ Is it proper to permit "official" duties that result in significant personal benefits? How does one determine whether a benefit that may be both personal and official is more of one than the other? After all, isn't the aides' purpose to perform time-consuming, lesser duties that enable the officer to attend to the more significant chores of managing the Army's affairs? No definitive interpretation of the term "official" assists in this analysis. Nonetheless, some nexus must exist between the aides' duties and the officer's military duties. Simply freeing-up the general officer's time to concentrate on official business is not enough. Maybe a more fitting question is when is it ever appropriate for a subordinate to perform tasks

46. See generally U.S. DEP'T OF ARMY, PAM. 608-47, A GUIDE TO ESTABLISHING FAMILY SUPPORT GROUPS (16 Aug. 1993). On 1 June 2000, the Department of the Army's Community and Family Support Center (CFSC) redesignated Family Support Groups (FSG) as Family Readiness Groups (FRG). Although this change purports to alter the status of FSGs/FRGs, the CFSC did not withdraw *Department of the Army 608-47*. Telephone Interview with Ms. Holly Gifford, Mobilization and Deployment Program Manager, Army Community Services (July 29, 2002); see also Memorandum, Department of the Army Community and Family Support Center (CFSC-SFA), to Family Readiness Groups, subject: Implementing Guidance for Transitioning from Family Support Groups (15 June 2000) (on file with author); U.S. DEP'T OF ARMY, REG. 210-22, PRIVATE ORGANIZATIONS ON DEPARTMENT OF THE ARMY INSTALLATIONS (22 Oct. 2001).

47. AR 614-200, *supra* note 2, para. 8-10b.

48. DOD DIR. 1315.9, *supra* note 18, para. III.A.

49. *Id.* para. III.B.

50. The Court of Military Appeals posited that the test was "whether these services were to be performed in the capacity of a private servant to accomplish a private purpose, or in the capacity of a soldier, i.e., to accomplish a necessary military purpose." *United States v. Robinson*, 20 C.M.R. 63, 69 (C.M.A. 1955) (quoting *United States v. Semioli*, 53 BR 65).

for a general officer that could otherwise be considered inappropriate if performed for a lower ranking officer?

The Standards for Ethical Conduct also explicitly prohibit the use of public office for private gain.⁵¹ Undoubtedly, in drafting this provision, the authors primarily contemplated financial gain. However, it is conceivable that an officer might "lawfully" use subordinates (to assist with or decrease the officer's "official" work) for the sole purpose of increasing the officer's personal free time. While this use of subordinates may not constitute a violation of the Standards for Ethical Conduct's prohibition against using one's office for private gain, it may be inappropriate for no other reason than it creates the appearance of a violation.⁵² Put simply, if a reasonable person would believe that an action violates the law or the standards of conduct, then most likely the action violates the Standards for Ethical Conduct. Applied to the facts in this scenario, this principle should serve to deter general officers from using subordinates in any questionable manner.

Avoiding the appearance of impropriety is crucial. In short, this may be the most important issue for general officers to remember. No reasonable officer would jeopardize their current position of respect or trade their future career for the embarrassment and minimal personal gain achieved through the misuse of subordinates. Intentional violations of the ethical rules are obvious to spot and are quick to draw unwanted public attention, but, unintentional or incidental misuse of subordinates is more likely to cause problems. In either case, the misuse of aides' time or services is unethical. Consequently, general officers and their advisors must guard against both actual and perceived violations of the law.

Conclusion

Many questions may remain regarding the proper duties of general officer aides. There truly is little guidance in this area, and the guidance that does exist is very "loose." Skeptics may argue that general officers would like to keep it that way so as to maximize the privileges of rank, but the truth is that the overwhelming majority of general officers are only interested in the full utilization of the assets or privileges lawfully afforded to them. While few detailed rules exist, detailed rules may not be necessary. Although thin, the present regulations provide sufficient guidance, while retaining sufficient flexibility for officers to mold their aides' duties to the fluid needs of the military. General officers are entrusted to do the right thing,⁵³ and previous promotions are generally proof that the officer has acted ethically and responsibly. Rank may indeed have its privileges, but it also has significant responsibilities. Major Tuckey.

51. STANDARDS FOR ETHICAL CONDUCT, *supra* note 22, § 2635.702; see also *id.* § 2635.502; Exec. Order No. 12,674, 3 C.F.R. § 215 (1990).

52. STANDARDS FOR ETHICAL CONDUCT, *supra* note 22, § 2635.101(b)(14). This section of the Standards of Conduct was drafted to provide guiding principles to apply in situations not otherwise covered by the regulation.

Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

Id.

53. The regulations that do exist appear to have been written with deference to the common sense that generals and aides have shown in the past. More guidance may not be needed simply because general officers and their aides have heretofore acted responsibly, or that the parties have had the wisdom to make proper choices, or maybe that few complaints of abuse have been made. Regardless of the reason, more regulation may not be needed. In fact, this may be one reason why the aide de camp provisions, included in the former AR 614-16, were never reissued as part of a new regulation.